IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

COMPANY PETITION NO. 1-S OF 1987

R. B. Ghosh,
Proprietor of
M/s. Sparklet Engineers,
having his Office at 104,
Sati Industrial Estate,
I. B. Patel Road,
Goregaon(E),
Bombay - 400 063. ... Petitioner.

Mr. A. Kunju, Official Liquidator present in person.

CORAM: P. V. HARDAS, J.

DATED: 22ND NOVEMBER, 2002.

ORAL ORDER

This Report has been filed by the Official Liquidator on 11th October, 2002, under Section 481 of the Companies Act, 1956 r/w Rule 281 of the Companies(Court) Rules, 1959 for dissolution of the Company.

2. This Court by its Order dated 4th October, 2002, on Report No.1/2002 had permitted the Official Liquidator to file this Application/Report. The Company was ordered to be wound up by the Orders of this Court on 24th January, 1989 and the Official Liquidator attached to this Court had been appointed as the Liquidator of the Company. The winding up Order was on the basis of the Petition for winding up filed by Mr. R. B. Ghosh, Proprietor of Sparklet Engineers

on the ground that the Company was unable to pay its debts. Pursuant to the Order of this Court, the Official Liquidator had deputed his Assistants to the registered Office of the Company at Vasco-da-Gama on 11th August, 1989 with a direction to take over the charge of the Company. The Assistants who were deputed by the Official Liquidator informed him that there was no one at the address and there was no sign board or any trace of the Company and, therefore, the Official Liquidator could not take possession of the registered Office at Vasco-da-Gama. No assets or books of Accounts came in the possession of the Official Liquidator and the Official Liquidator informed this Court by his Report dated 21st July, 1997. Since Ex-Directors of the Company had failed to file Statement of Affairs, a complaint under Section 454 of the Companies Act, 1956 was filed against the three Ex-Directors who were convicted and fined on their admission of guilt. The Ex-Directors thereafter filed the Statement of Affairs which was found to be defective. The Official Liquidator, therefore, filed an application under Section 457 of the Companies Act, 1956 in this Court on 20th Novedmber, 1990 stating therein that the Statement of Affairs was not filed properly and sought exemption from filing a preliminary Report, list of contributories etc.. The prayers in the above application was granted on 13th December,

1990. Since the Official Liquidator was not in possession of any assets and records of the Company, he could not file any claims as is required under Section 446 of the Companies Act, 1956 for realisation of the dues of the Company. The Deautsche Bank, in pursuance to the Order of this Court, had filed Civil Suit No.1/90 in this Court. This Court by its Order dated 3rd July, 1998 permitted the Bank to enforce and realise goods and debts to the extent of Rs.15.50 lakhs and also observed that the Plaintiff Bank was entitled to revoke the personal guarantee given by Defendant No.2 to the sum of Rs.12 lakhs and interest thereon as was mentioned in the guarantee.

3. In the present application, the Official Liquidator in para 10 of his Report has stated that there is no Income Tax which is payable by the Company since the Company was not carrying on any business and no profit was made by the Company after it went into liquidation. A notice has been issued to the Income Tax Department but neither any claim nor communication has been received from them. In para 11 of this Report, it is stated by the Official Liquidator that since no assets were shown to be realisable and no assets are coming in the hands of the Official Liquidator, the Official Liquidator could not take any action against the Ex-Directors under Section 543 of

the Companies Act, 1956.

4. This Court by its Order dated 13th December, 1990, has dispensed with the settlement of list of contributories. Filing of the Half Yearly Accounts has also been dispensed with by this Court by its Order dated 13th December, 1990.

5. In para 15 of the Report, the Official Liquidator submits that there is nothing to be realised from the assets of the Company and, therefore, this application under Section 481 of the Companies Act r/w Rule 281 of the Companies(Court) Rules, 1959 is filed for dissolution of the Company.

6. I have given my anxious consideration to the contents of the Report submitted by the Official Liquidator and I am of the considered opinion that the Official Liquidator cannot proceed with the winding up of the Company as there are no assets and it is just and reasonable in the circumstances that an Order of dissolution of the Company be made. Accordingly, the Company shall stand dissolved from the date of this Order. The Report filed by the Official Liquidator is disposed of in the above terms. Since the Company stands dissolved by this Court, nothing survives in the

Petition and the Company Petition stands accordingly disposed of.

P. V. HARDAS, J.

RD.